Vulcan Golf, LLC v. Google Inc. et al Doc. 266

Order Form (01/2005)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Blanche M. Manning	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	07 C 3371	**DATE**	June 23, 2009
CASE TITLE	*Vulcan Golf, et al. v. Google*		

DOCKET ENTRY TEXT

For the reasons stated below, Google's motion to limit discovery and for a scheduling order [246-1] is granted in part. As specified in the court's standing order, Google shall serve (not file) its opening summary judgment motion no later than 30 days after the date of entry of this order. Concurrent with its opening motion, Google will produce all evidence it believes relevant to its motion. The plaintiffs' response shall be served within 120 days thereafter. During that period, the plaintiffs can request additional discovery they believe necessary to oppose the motion. Google's reply brief shall be served no later than 30 days after receiving the plaintiffs' response brief. Google may request any additional discovery necessary to reply to the plaintiffs' response brief.

■[For further details see text below.]

00:00

STATEMENT

The court assumes familiarity with the facts of this case. Google seeks to proceed immediately with motions for summary judgment. Google contends that it will seek judgment on one issue, its liability under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)("ACPA"), and asks that discovery be limited to that which is needed to bring and oppose the motion. The Parking Company Defendants moved to join Google's motion, which the court allowed. However, in the past week, stipulations to dismiss have been filed as to all of the Parking Company Defendants; thus, as the case is no longer pending against the Parking Company Defendants, their motion is now moot and the court will address the motion only as it relates to Google. For the reasons stated below, the motion is granted in part.

The plaintiffs' First Amended Complaint alleged fourteen different counts based on the alleged scheme by Google to make "billions of dollars in ill-gotten advertising and marketing revenue" by knowingly and intentionally registering, licensing and monetizing purportedly deceptive domain names at the expense of the plaintiff-mark owners. The counts included, among others, RICO and trademark violations as well as various state law claims. After three rounds of briefing, various claims were dismissed, including the RICO claims. The court also denied the plaintiffs' motion for class certification.

Google contends that any damages associated with the surviving trademark claims against it amount to approximately $500. Thus, it asserts that the only economically viable claim that remains is the one under the ACPA, which allows for statutory damages from $1,000 to $100,000. Google contends that, as a matter of law, it cannot be liable under the ACPA because it does not register, traffic in or use the domain names at issue, as required by the statute. According to Google, the ACPA issue is ripe for summary adjudication and its resolution will result in a substantial cost savings because much of the discovery sought by the plaintiffs will be rendered unnecessary. Accordingly, Google requests that it be allowed to proceed immediately with a motion for summary judgment on the ACPA claim and that any discovery be limited to that which is necessary to brief the motion.

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STATEMENT

The plaintiffs assert that they are generally amenable to proceeding as Google has suggested, just with a lengthier schedule and with discovery taking place prior to briefing.

After reviewing the parties' briefs on the issue and taking into account that Google is the only defendant still left in the case and the parties will be briefing only one claim, the court sets the following schedule:

(1) As specified in the court's standing order, Google shall serve (not file) its opening summary judgment motion no later than 30 days after the date of entry of this order. Concurrent with its opening motion, Google will produce all evidence it believes relevant to its motion.

(2) The plaintiffs' response shall be served within 120 days thereafter. During that period, the plaintiffs can request additional discovery they believe necessary to oppose the motion.

(3) Google's reply brief shall be served no later than 30 days after receiving the plaintiffs' response brief. Google may request any additional discovery necessary to reply to the plaintiffs' response brief.

(4) Each party shall file its summary judgment papers and provide one courtesy copy to the court no later than one day after Google's reply brief is due.

The court expects that the parties will abide by the schedule set by the court. To that end, the parties are directed to cooperate regarding each others' discovery requests so that the briefing schedule remains intact. This includes responding to discovery requests in an expeditious manner. In the event that the parties are unable to resolve a discovery dispute, they are directed to bring it to the attention of the magistrate judge as soon as possible.

RH/p